Public Prosecutor v Lee Ming & Anor

HIGH COURT (KUCHING) — CRIMINAL REVISION NO 43-03 OF 1996(III)
IAN CHIN J
29 JUNE 1998

Criminal Procedure *— Prosecution — Right to conduct prosecution — Whether any party apart from the Public Prosecutor may be lawfully empowered to conduct prosecution — Whether the Attorney General should be the sole or only person to institute, conduct or discontinue any proceedings for an offence — Federal Constitution art 145(3) — Criminal Procedure Code (FMS Cap 6) s 380(ii)(b) — Forests Ordinance (Sarawak Cap 126) s 92A — Wild Life Protection Ordinance (Sarawak) s 39*

Criminal Procedure *— Prosecution — Right to conduct prosecution — Whether prospective ruling on the right to conduct prosecution should affect trials of cases which had not been concluded after the ruling was delivered*

Both accused were charged under the Forests Ordinance and Wild Life Protection Ordinance. They were prosecuted by a legal officer of the State Attorney General Chambers ('the prosecution officer'). The sessions court judge — following *Repco Holdings Bhd v PP* [1997] 3 MLJ 681 ('*Repco*') — ruled that the prosecution officer had no written authorization to prosecute and thus the trial was declared a nullity. The prosecution officer had relied on a written authority to prosecute signed on behalf of the Director of Forests and Director of Wild Life under s 92A of the Forests Ordinance and s 39 of the Wild Life Protection Ordinance respectively. Counsel urged the court to limit the effect of *Repco* to cases registered from the day of the ruling (ie 2 October 1997).

Held:

(1) Section 92A of the Forests Ordinance and s 39 of the Wild Life Protection Ordinance are unconstitutional, null and void as they allow persons other than the Federal Attorney General to institute, conduct or discontinue any proceedings for an offence. Therefore, the authorization given pursuant to the provisions did not clothe the prosecution officer with the authority to prosecute. In this regard, the learned sessions court judge was right in concluding that the prosecution was a nullity (see p 117B–H).

(2) A prospective ruling should not affect concluded trials. It cannot apply to trials of cases, whether registered before or after the ruling in *Repco*, which had not been concluded, that is where a decision of conviction or acquittal has not yet been delivered (see p 121C); *PP v Dato' Yap Peng* [1987] 2 MLJ 311 distinguished; *Repco Holdings Bhd v PP* [1997] 3 MLJ 681 not followed.

Obiter:

(1) The wording of s 380(ii)(b) of the Criminal Procedure Code (FMS Cap 6) which allows the conduct of prosecution without even a need to obtain sanction to prosecute from the Federal Attorney General is also unconstitutional and a nullity. As a matter of a fact, every legislation, be it State or Federal, which attempts to clothe any person other than the Federal Attorney General with the power to institute, conduct or discontinue any prosecution for an offence would be unconstitutional and a nullity (see pp 119H–I and 120A).

(2) The omission of the word 'only' or 'sole' from art 145(3) of the Federal Constitution is demonstrative of the clear intention of the framers of the Constitution that the Federal Attorney General should not be the sole or only person to institute, conduct or discontinue any proceedings for an offence. There must be other authorities other than the Federal Attorney General who can decide to commence proceedings for an offence, especially very minor offences. The decision whether to institute proceedings in respect of those offences has throughout the years been very properly and wisely left to the various local authorities and the officers of the State Attorney General's Chambers (see p 122G–I); *Repco Holdings Bhd v PP* [1997] 3 MLJ 681 not followed.

[Bahasa Malaysia summary

Kedua-dua tertuduh telah dipertuduhkan di bawah Ordinan Hutan dan Ordinan Perlindungan Hidupan Liar. Mereka telah didakwa oleh seorang pegawai undang-undang dari Kamar Negeri Peguam Negara ('pegawai pendakwaan'). Mahkamah sesyen — mengikut *Repco Holdings Bhd v PP* [1997] 3 MLJ 681 ('*Repco*') — memutuskan bahawa pegawai pendakwaan tidak mempunyai kuasa bertulis untuk mendakwa dan justeru itu perbicaraan diisytiharkan sebagai suatu pembatalan. Pegawai pendakwa telah bergantung pada kuasa bertulis untuk mendakwa yang ditandatangani bagi pihak Pengarah Hutan dan Pengarah Perlindungan Hidupan Liar di bawah s 92A Ordinan Hutan dan s 39 Ordinan Perlindungan Hidupan Liar masing-masing. Peguam meminta mahkamah agar menghadkan kesan *Repco* kepada kes-kes yang didaftarkan dari hari keputusan (iaitu 2 Oktober 1997).

Diputuskan:

(1) Seksyen 92A Ordinan Hutan dan s 39 Ordinan Perlindungan Hidupan Liar adalah tidak berperlembagaan, batal dan tak sah kerana mereka membenarkan orang selain daripada Peguam Negara Persekutuan untuk membawa, menjalankan atau memberhentikan apa-apa prosiding mengenai sesuatu kesalahan. Maka, kebenaran yang diberikan menurut peruntukan tidak melitupi pegawai pendakwaan dengan kuasa untuk mendakwa. Mengenai hal ini, hakim mahkamah sesyen yang arif adalah

betul dalam menyimpulkan bahawa pendakwaan itu merupakan suatu pembatalan (lihat ms 117B–H).

(2) Suatu keputusan prospektif tidak patut menjejaskan perbicaraan yang telah tamat. Ia tidak terpakai kepada perbicaraan kes-kes, sama ada yang didaftar sebelum atau selepas keputusan *Repco*, yang belum lagi diselesaikan, iaitu di mana keputusan ke atas suatu sabitan atau pembebasan belum lagi disampaikan (lihat ms 121C); *PP v Dato' Yap Peng* [1987] 2 MLJ 311 dibeza; *Repco Holdings Bhd v PP* [1997] 3 MLJ 681 tidak diikut.

Obiter:

(1) Susunan kata s 380(ii)(b) Kanun Acara Jenayah (NMB Bab 6) yang membenarkan pengendalian pendakwaan tanpa keperluan untuk memperolehi sanksi untuk mendakwa daripada Peguam Negara Persekutuan juga tidak mengikut perlembagaan dan merupakan suatu pembatalan. Sebenarnya, setiap perundangan, baik Negeri mahupun Persekutuan, yang cuba melitupi sesiapa selain daripada Peguam Negara Persekutuan dengan kuasa untuk membawa, menjalankan atau memberhentikan apa-apa pendakwaan mengenai sesuatu kesalahan adalah tidak berperlembagaan dan merupakan suatu pembatalan (lihat ms 119H–I dan 120A).

(2) Peninggalan perkataan 'sahaja' atau 'tunggal' dari perkara 145(3) Perlembagaan Persekutuan menunjukkan hasrat jelas penggubal Perlembagaan bahawa Peguam Negara Persekutuan tidak haruslah menjadi satu-satunya orang atau orang tunggal untuk membawa, menjalankan atau memberhentikan apa-apa prosiding mengenai sesuatu kesalahan. Mestilah terdapat pihak-pihak berkuasa selain daripada Peguam Negara Persekutuan yang boleh mengambil keputusan untuk memulakan prosiding mengenai sesuatu kesalahan, terutamanya kesalahan-kesalahan kecil. Keputusan sama ada untuk memulakan prosiding berkenaan dengan kesalahan begitu telah dengan betul dan bijaknya selama ini dibiarkan kepada pelbagai pihak berkuasa tempatan dan pegawai-pegawai Kamar Negeri Peguam Negara (lihat ms 122G–I); *Repco Holdings Bhd v PP* [1997] 3 MLJ 681 tidak diikut.]

Notes

For a case on the right to conduct prosecution, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) para 2040.

Cases referred to

PP v Dato' Yap Peng [1987] 2 MLJ 311 (distd)

Mamat bin Daud & Ors v Government of Malaysia [1988] 1 MLJ 119 (refd)

PP v Chew Siew Luan [1982] 2 MLJ 119 (refd)
Repco Holdings Bhd v PP [1997] 3 MLJ 681 (not folld)

Legislation referred to

Criminal Procedure Code (FMS Cap 6) ss 2, 377, 380(i), (ii)(b), 388, 418A, First Schedule
Criminal Procedure (Amendment) Act 1998 (Act A1015)
Dangerous Drugs Act 1952 s 41B
Federal Constitution arts 121(1), 145(3)
Forests Ordinance (Sarawak Cap 126) ss 18(1), 68(1), 80, 86(1), 92A
Penal Code (FMS Cap 45)
Wild Life Protection Ordinance (Sarawak) s 39

Appeal from: Case No SC–87–15 of 1994(I) (Sessions Court, Kuching)

Abd Majid bin Hamzah (Senior Federal Counsel) for the Public Prosecutor.
Kho Lik Khiat (*Chan Kho Poh & Co*) for the accused.

Cur Adv Vult

Ian Chin J:

Introduction

The court was moved by the Public Prosecutor to revise a decision of the sessions court judge handed down on 26 June 1996 by which the sessions court judge ruled that the prosecution officer Lim Heng Choo ('the prosecution officer'), who was at that time a legal officer of the Sarawak State Attorney General Chambers, had no written authorization to prosecute Lee Ming and Syarikat Stungkor Butan on two of three charges. The two charges were respectively under ss 86(1) and 80 of the Forests Ordinance (Sarawak Cap 126). The trial in respect of the two charges ended when at the end of the case for the prosecution the court declared the trial a nullity. What was relied on by the prosecution officer as constituting written authority for him to prosecute was a letter dated 18 May 1996 that was signed on behalf of the Director of Forests and it is in these terms:

> 18 May 1996
>
> To whom it may concern
>
> I, Mr Lee Hua Seng Deputy Director of Forests, Sarawak, do hereby certify and confirm that Mr Lim HengChoo is lawfully entitled to discharge the function of a forest officer under the provisions of the Forests Ordinance (Cap 126) particularly s 92A of the said Ordinance.
>
> 'BERSATU BERUSAHA BERBAKTI'

A [Signed]
[Lee Hua Seng]
for Director of Forests,
Sarawak.

The argument of the prosecution at the sessions court proceeded on the B basis that the prosecution officer had valid authorization under s 92A of the Forests Ordinance in the form of the letter which I mentioned earlier. Section 92A reads:

> Prosecution in respect of offences under this Ordinance or by any subsidiary legislation trade hereunder may be conducted by —
>
> C (a) The State Attorney General or any legally qualified officer authorized by him;
>
> (b) The Director; or
>
> (c) any forest officer or any other public officer generally or specially authorized in that behalf by the Director.

D That provision is surely, in the light of *Repco Holdings Bhd v PP* [1997] 3 MLJ 681, which I respectfully follow, unconstitutional, null and void as it allows persons other than the Federal Attorney General to institute, conduct or discontinue any proceedings for an offence. Therefore, whatever the nature of the authorization that was given pursuant to that provision E did not clothe the prosecution officer with authority to prosecute. In this regard, the learned sessions court judge was right in concluding that the prosecution was a nullity.

This brings me to the third charge which is under s 22(2) of the Sarawak Wild Life Protection Ordinance. The offence was for being in possession of a protected plant which carries a sentence of imprisonment F of one year and a fine of RM25,000. The provision enabling prosecution in that Ordinance is in the following section:

> 39 Prosecutions in respect of offences committed under this Ordinance or any rule made hereunder may be conducted by a Wild Life Officer, or by any other person specially authorized in writing in that behalf by the G Director.

In my view, that provision suffers the same unconstitutionality and nullity because it vested prosecutorial authority on a person other than the Federal Attorney General and without the Federal Attorney General having any discretion in the institution, conduct or discontinuance of the proceedings H under the Sarawak Wild Life Protection Ordinance.

Prosecution's argument

When arguing that the sessions court judge was wrong, Mr Tun Abd Majid bin Tun Hamzah, learned deputy public prosecutor, had relied on I s 380(ii)(b) of the Criminal Procedure Code (FMS Cap 6) to say that since the prosecuting officer was an officer of a government department, he was entitled to prosecute. That provision says:

> Notwithstanding anything in this Chapter contained [in summary non-seizable cases in the Court of a Magistrate] —
>
> ... any officer of any Government department or of any local authority or statutory authority or any person employed by any local authority or statutory authority may appear and conduct any prosecution for an offence against any written law which it is the duty of the said department or authority specially to enforce.

Mr Kho Lik Kiat, learned counsel for the accused, replied that s 380(ii)(b) has no application because the offences with which the accused were charged are seizable offences. Learned counsel had submitted on the basis that the Forests Ordinance providing for a heavier sentence was already amended at the time of the commission of the offence but it is not the case as I shall shortly demonstrate.

Both offences were alleged to have been committed on 4 August 1993. At that time, the offence under s 86(1) carried a maximum imprisonment of two years (plus other monetary penalty) but this was subsequently increased to five years and RM50,000 (plus other penalty). Whereas the s 80 offence at the time of its commission carries a maximum sentence of one year imprisonment (plus other monetary penalties). By s 2 of the Criminal Procedure Code, a non-seizable offence is one which a police officer may not ordinarily arrest without warrant according to the third column of the First Schedule. Offences against laws other than the Penal Code (FMS Cap 45) punishable with imprisonment for three years and upwards but not less than seven are seizable offences whereas those punishable with imprisonment of less than three years are non-seizable offences. Therefore, at the time of the commission of the two offences, that is on 4 August 1993, they were both non-seizable offences within the meaning of s 380(ii)(b). However, the Forests Ordinance was amended with the result that effective on 1 February 1994 the sentence for the offence under s 86(1) was enhanced from two years to five years making it a seizable offence. The sentence of imprisonment under s 80 was unaffected.

It was after realizing that the amendment providing for the enhanced sentence came subsequent to the commission of the offence and the relevant law applicable being the pre-amended section, that Mr Kho then argued that s 68(1) of the Forests Ordinance had made all offences arrestable and therefore all seizable offences, citing *PP v Chew Siew Luan* [1982] 2 MLJ 119 (FC). In so far as s 18(1) is concerned, it enables a forest officer to arrest without warrant any person reasonably suspected of having been concerned in any forest offence if such person refuses to give his name and residence, or gives a name and residence which there is reason to believe is false or there is reason to believe that he will abscond. As for *PP v Chew Siew Luan*, the Federal Court was concerned with the question of whether s 388 of the Criminal Procedure Code overrides the provisions of s 41B of the Dangerous Drugs Act 1952, both concerning the granting of bail in capital offences. The court there held that the provisions regulating the granting of bail under the Dangerous Drugs Act must be construed in the context of that Act and not in that of the Criminal

Procedure Code (allowing bail in certain circumstances) and to that extent the general provisions of the Criminal Procedure Code must ex necessitate yield to the specific provision (disallowing bail totally) of s 41B of the Dangerous Drugs Act. The court there also held that where a special provision is made in a special statute, that special statute excludes the operation of a general provision in the general law, applying the cardinal principle of interpretation — generalibus specialia derogant. Mr Kho then argued that since s 68(1) of the Forests Ordinance made the two offences a seizable offence, the Criminal Procedure Code must yield to s 68(1) of the Forests Ordinance.

In considering that argument it must be borne in mind that s 68(1) of the Forests Ordinance did not make all forest offences seizable offences but only so if the person suspected of committing a forest offence: (1) refuses to give his name and residence; or (2) gives a name and residence which there is reason to believe is false; or (3) if there is reason to believe that he will abscond. Unless those circumstances (1), (2) or (3) present themselves, the offences under ss 80 and 86(1), carrying at the relevant time a sentence of below three years, were still non-seizable offences. Therefore, those offences did not by the mere enactment of s 68(1) become seizable offences. They remain non-seizable offences until the said circumstances are present to turn them into seizable offences. In the absence of the said circumstances, the definition of seizable and non-seizable offences given by s 2 of the Criminal Procedure Code still apply since the offences were, at the relevant time, punishable with less than three years imprisonment. Therefore, there is no question of the Criminal Procedure Code yielding to s 68(1) of the Forests Ordinance since they cover a different situation (the former limits non-seizable offence to cases where the maximum imprisonment is less than three years while the latter converting what otherwise would be a non seizable offence into a seizable one when certain circumstances present themselves). The situation here is unlike that of *PP v Chew Siew Luan* where bail for a capital offence is allowed under the Criminal Procedure Code and not under the Dangerous Drugs Act.

Whatever it is, art 145(3) of the Constitution again comes into play. Any provision which attempts to clothe any person other than the Federal Attorney General with the power to institute, conduct or discontinue any prosecution for an offence must necessarily fall foul of art 145(3). In this regard, s 380(ii)(b) which the prosecution relies on as allowing the prosecution officer to prosecute must be examined to see whether it falls foul of art 145(3). It is clear from the wording of s 380(ii)(b), which I have earlier reproduced, that the conduct of prosecution was taken totally out of the hands of the Federal Attorney General and vested in officers of Government department, local authority or statutory authority and there is not even a need to obtain sanction to prosecute from the Attorney General. It must follow from the decision of *Repco Holdings Bhd v PP* that s 380(ii)(b) is also unconstitutional and a nullity. Not only that, every legislation, be it State or Federal, which attempts to clothe any person other than the Federal Attorney General with the power to institute,

conduct or discontinue any prosecution for an offence would also be unconstitutional and a nullity.

I am not unaware that there was a passing reference to s 380(i) in *Repco Holdings Bhd v PP* at p 690, where it was said that s 380(i) was of no assistance because members of the Securities Commission were not public officer, which may give rise to the implication that s 380(i) is still valid and not unconstitutional. Such an implication cannot be drawn because s 380(ii) is also, for the same reason which I have already stated, unconstitutional.

There remains one issue which is the question as to the meaning of 'prospective ruling'. It was urged that I should follow the ruling in *Repco Holdings Bhd v PP* at p 692, that the ruling includes 'cases registered from today', the date of which is 2 October 1997 and the court relied on, as supporting that ruling, the cases of *PP v Dato' Yap Peng* [1987] 2 MLJ 311 and *Mamat bin Daud & Ors v Government of Malaysia* [1988] 1 MLJ 119. I have now to examine whether those two cases lay down the law that a ruling can be made to apply to 'cases registered' from the date of the judgment.

The case *PP v Dato' Yap Peng* concerns s 418A of the Criminal Procedure Code which the Supreme Court held to be unconstitutional and void as being an infringement of the provisions of art 121(1) of the Federal Constitution. It also held that the doctrine of prospective overruling would be applied so as not to give retrospective effect to the declaration made with the result that all proceedings of convictions and acquittals which had taken place under the section prior to the date of the judgment in this matter would remain undisturbed and not be affected. This is what the Supreme Court at p 320D said:

> ... The doctrine — to the effect that when a statute is held to be unconstitutional, after overruling a long-standing current of decisions to the contrary, the court will not give retrospective effect to the declaration of unconstitutionality so as to set aside proceedings of convictions or acquittals which had taken place under that statute prior to the date of the judgment which declared it to be unconstitutional, and convictions or acquittals secured as a result of the application of the impugned statute previously will accordingly not be disturbed — can be applied by the Supreme Court as the highest court of the country in a matter arising under the Constitution to give such retroactive effect to its decision as it thinks fit to be moulded in accordance with the justice of the cause or matter before it — to be adhibited however with circumspection and as an exceptional measure in the light of the circumstances under consideration.

Clearly then that case talks of disturbing 'proceedings of convictions and acquittals which had taken place under the section prior to the date of judgment' which is totally different from 'cases registered from today'. In my view, the decision in *PP v Dato' Yap Peng* was intended not to affect cases where the trials had already been completed and had resulted in convictions or acquittals which is an entirely different proposition from 'cases registered'. As for *Mamat bin Daud v Government of Malaysia*, there is no exposition on the law as to the extent of the prospective ruling.

A It is relevant to consider the position of the cases that were pending in the subordinate courts on 2 October 1997, pending in the sense: (1) the trial had not yet commenced; and (2) the trial had commenced but not completed yet. If the trials of those cases are to commence or to continue today, it would mean that they are being continued despite the same having been commenced or conducted in violation of the Constitution. It B would constitute a continuing violation in the face of the ruling of the court in *Repco Holdings Bhd v PP* which is not something which the decision in *PP v Dato' Yap Peng* had intended. What was intended by a prospective ruling is that it should not affect concluded trials. It cannot apply to trials of cases, whether registered before or after the ruling in C *Repco Holdings Bhd v PP*, which had not been concluded, that is where a decision of conviction or acquittal has not yet been delivered. To rule otherwise would be to allow such officers to continue to prosecute in the face of the unconstitutionality while also having the effect of postponing the effective or operative date of the judgment in *Repco Holdings Bhd v PP*, which is the date of the pronouncement of the judgment, until some D unknown dates in the future when the trials have resulted in convictions or acquittals. There is no need for such a result. I do not see any harm in those cases being recommenced.

I am not unaware that the Criminal Procedure Code had been amended by the Criminal Procedure (Amendment) Act 1998 ('Act A1015') which E came into force on 1 April 1998 and which was enacted as a result of *Repco Holdings Bhd v PP*. Section 377 had been amended to, among others, provide for various persons (who are not Public Prosecutor, Senior Public Prosecutor, deputy public prosecutor or assistant public prosecutor) to conduct prosecution subject to the control and direction of the Public F Prosecutor. The old s 380 had been removed. This action of the legislature appears to support my conclusion that s 380(ii)(b) was also unconstitutional. But I am more concerned with the saving provision of Act A1015 which reads:

> 11 (1) The provisions of this Act shall not apply to any prosecution or proceeding which has been instituted but has not been completed G on the date of the commencement of this Act.
>
> (2) No finding, judgment, sentence or order of any Court made or passed or imposed before the date of the commencement of this Act or during or at the conclusion of any prosecution or proceeding referred to in subsection (1) shall be reversed, altered or affected by any provision of this Act.

H That saving provision, in my view is only concerned with the effect of the provisions of Act A1015. It does not in any way affect what has been decided in *PP v Dato' Yap Peng* concerning prospective ruling. In any event, s 11(2) talks of 'finding, judgment, sentence or order' and not with continuing a prosecution which was commenced unconstitutionally. I Therefore, the amendment has no bearing on the issue at hand.

For the reasons I have stated, I would respectfully decline to follow *Repco Holdings Bhd v PP* where it held that the ruling would not apply to

'cases registered'. The cut-off point, that is, the cases that should not be affected by the ruling of unconstitutionality should be those that have already resulted in a conviction or acquittal.

Conclusion

For the reasons stated, the learned sessions court judge was right in his conclusion that the trial was a nullity. The trial must be set aside and this includes the setting aside of the decision of the learned sessions court judge in calling for the defence on the other charge. There is a lesson to be learned from all this. If the trial in this case had been completed at one continuous sitting in 1994 and not been staggered and carried over a long period of time, it would not have to suffer the fate that befalls it now.

Further, what I have said here must be true also of every prosecution that is now pending before the subordinate courts for offences under any state legislation or bye-law where prosecution was taken totally out of the hands of the Federal Attorney General and vested in officers of government department, local authority or statutory authority and where there is no sanction to prosecute from the Federal Attorney General.

However, I have reservations about the correctness of *Repco Holdings Bhd v PP* with regard to the question of the interpretation of art 145(3) of the Constitution. But, because Parliament had enacted an amendment to the law concerned as a result of the decision of *Repco Holdings Bhd v PP*, I will not give a differing judgment as that would cause too much of an upheaval which may not serve the interest of justice. After all, all that is now required is, as would appear to be the intention, the appointment of the officers concerned to conduct the prosecution. But I will now explain why I have my reservations. It will be noticed that *Repco Holdings Bhd v PP* had interpreted art 145(3) in such a way as to read into that article the word 'only' or 'sole'. The relevant words of that article are: 'The Attorney General shall have power ...'. The conclusion of *Repco Holdings Bhd v PP* can only be sustained if the word 'only' is added to make the relevant part of that clause to read: 'Only the Attorney General shall have the power ...'; or the word 'sole' is added so that it reads: 'The Attomey General shall have the *sole* power...'. In my view, that the word 'only' or 'sole' is missing is demonstrative of the clear intention of the framers of the Constitution that the Federal Attorney General should not be the sole or only person to institute, conduct or discontinue any proceedings for an offence. But the Federal Attorney General still has power under the said article to control the prosecution. There must be other authorities other than the Federal Attorney General who can decide to commence proceedings for an offence, especially very minor offences like those dealing with stray or unlicensed dogs, littering, illegal hawking, handling food without a health licence, registration of buffaloes, registration of bicycles and so on. The more serious offences are those under the various ordinances and enactments, like felling timber from a forest. The decision whether to institute proceedings in respect of those offences has throughout the years been very properly and wisely left to the various local authorities and the officers of the State Attorney General's Chambers. They have been entrusted by

A the legislators to perform their duties by the enactment of ordinances or bye-laws and, in my view, that intention of the legislators was made clear by the omission of the word 'only' or 'sole' from the said article. Now, with the decision in *Repco Holdings Bhd v PP*, it would mean that those local authorities cannot decide on the institution without the Federal Attorney General first having a look at the file relating to the matter because the power is 'exercisable at his discretion'. I do not think the Federal Attorney General can simply sign away the exercising of his discretion by a wholesale appointment of prosecutors under the said recent amendment to the Criminal Procedure Code as that may be against the article requiring him to personally exercise that discretion. I cannot imagine our legislators burdening the Federal Attorney General with the minor offences which I have mentioned. For the reasons I have stated, I have my reservation about the correctness of the decision in *Repco Holdings Bhd v PP* which I follow in part because I do not wish to add to the uncertainty regarding the pending cases.

Order accordingly.

Reported by Loo Lai Mee